SUBJECT INDEX

	Page
Counter-Statement of the Case	1-2
Counter-Statement of Constitutional Provisions and Statutes Involved	2-3
Reasons for Denying the Writ	4-11
1. There is no conflict in the order of the Sixth Circuit Court of Appeals affirming the judgment of the District Court with other courts of appeal or with the decisions of the United States Supreme Court	4-5
2. There is no conflict between the order of the Sixth Circuit Court of Appeals and the decisions of the Supreme Court of the State of Michigan in the construction of the Constitution and Laws of the State of Michigan relating to the condemnation of private property for public use	6-11
Conclusion	12
Appendix	13-21
Constitution of the State of Michigan, Article XIII, Section 1	13
Constitution of the State of Michigan, Article XIII, Section 2	13
Public Acts of State of Michigan, 1945, Act 344, as amended, C. L. 1948, Sec. 125.71, et seq., as amended, M. S. A. Sec. 5.3501 et seq., as amended	13-16
Sec. 1, M. S. A. §5.3501	13, 14
Sec. 2, M. S. A. §5.3502	14
Sec. 3, M. S. A. §5.3503	15
Sec. 4, M. S. A. §5.3504	15
Sec. 5, M. S. A. §5.3505	16

Public Acts of State of Michigan of 1883, Act 124, as amended, C. L. 1948, §213.71 et seq., as amended, M. S. A. §8.41 et seq. as amended.. 16-21

Sec. 1, M. S. A. §8.41..... 16
Sec. 2, M. S. A. §8.44..... 16, 17
Sec. 6, M. S. A. §8.48..... 17, 18
Sec. 7, M. S. A. §8.49..... 18
Sec. 8, M. S. A. §8.50..... 18, 19
Sec. 10, M. S. A. §8.52..... 19
Sec. 11, M. S. A. §8.53..... 19
Sec. 12, M. S. A. §8.54..... 19, 20
Sec. 13, M. S. A. §8.55..... 20
Sec. 14, M. S. A. §8.56..... 20
Sec. 15, M. S. A. §8.57..... 21

INDEX TO AUTHORITIES CITED

Page

Baber v. Texas Utility Co., 228 F. 2d 665, C. A. 5 (1956) 10
Baldwin v. Morgan, 251 F. 2d 780, C. A. 5 (1958)... 5
Burt v. City of New York, 156 F. 2d 791, C. A. 2 (1946) 5
City of Allegan v. Vonasek, 261 Mich. 16, 21 (1932), 245 N. W. 557, 559..... 8
Grand Rapids Board of Education v. Baczewski, 340 Mich 265, 271 (1954), 65 N. W. 2nd 810, 812, 813 8
In re Brewster Street Housing Site, 291 Mich. 313, 331-343 (1939), 289 N. W. 493, 499-504..... 9
In re Civic Center-Salloum, 335 Mich. 582 (1953), 56 N. W. 2nd 387, 389, 390..... 8
In re Jeffries Housing Project, 306 Mich. 638, 646 647 (1943), 11 N. W. 2nd 272, 274, 275..... 9
In re White, 340 Mich. 140, 148 (1945), 65 N. W. 296, 300 7

Page

National Quarries Co. v. Detroit, T & I. R. Co., 10 F. (2d) 139 (1926) 9

Snowden v. Hughes, 321 U. S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1943) 4

Williams v. Dalton, 231 F. 2d 646, C. A. 6 (1956) 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 975

CARVER PROGRESS CLUB,
a Michigan Non-Profit Corporation, individually and for all its members as a class,
Petitioner,
vs.
LOUIS C. MIRIANI,
Mayor of the City of Detroit, et al.,
Respondents

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

COUNTER-STATEMENT OF THE CASE

We believe that the following corrections and additions to Petitioner's Statement of the Case are necessary.

In the first paragraph on page 6 of the Petition, the statement that 4,000 negroes lived in the area in approximately 1,200 medium cost structures is misleading and inconsistent with the allegations in paragraph eight of the Complaint (Certified Record 6a), in which it is alleged that the real property affected by the case contains approxi-

mately 300 parcels of improved realty, of which approximately 85% are populated by negroes.

In the fourth paragraph on page 6 of the Petition, Petitioner infers that all property owned by negroes in the area is to be acquired by the City. This is not true. Petitioner has not attached a copy of the Development Plan to its Complaint nor does the Complaint indicate what properties are to be taken and what properties are to remain, nor does the complaint designate the full nature and extent of the public improvements to be made in the area.

In the first paragraph on page 9 of the Petition, Petitioner states that the District Court cut off Petitioner's argument on the applicable law. This statement is not true. The District Court gave Petitioner ample time to furnish the Court any arguments it might have. (Certified Record 47a, 48a, 53a.)

In the third paragraph on page 9 of the Petition, Petitioner infers that its attorney, Milton R. Henry, was denied an opportunity to appear and argue in the Circuit Court of Appeals. Attorney for petitioner did not appear and make an oral argument (Petition 30). The Certified Record gives no reason for his non-appearance and discloses no motion for an adjournment of the hearing.

COUNTER-STATEMENT OF CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

In addition to the Constitutional and Statutory provisions set forth on page 5 of the Petition, the following are involved.

Article XIII, Section 1 of the Constitution of the State of Michigan

Article XIII, Section 2 of the Constitution of the State of Michigan

Act 344 of the Public Acts of the State of Michigan of 1945, as amended, C.L. 1948, §125.71 *et seq.*, as amended, M.S.A. §5.3501, *et seq.*, as amended

Section 1, M.S.A. §5.3501
Section 2, M.S.A. §5.3502
Section 3, M.S.A. §5.3503
Section 4, M.S.A. §5.3504
Section 5, M.S.A. §5.3505

Act 124 of the Public Acts of the State of Michigan of 1883, as amended, C.L. 1948, §213.71 *et seq.*, as amended, M.S.A. §8.41 *et seq.*, as amended

Section 1, M.S.A. §8.41
Section 2, M.S.A. §8.44
Section 6, M.S.A. §8.48
Section 7, M.S.A. §8.49
Section 8, M.S.A. §8.50
Section 10, M.S.A. §8.52
Section 11, M.S.A. §8.53
Section 12, M.S.A. §8.54
Section 13, M.S.A. §8.55
Section 14, M.S.A. §8.56
Section 15, M.S.A. §8.57

The pertinent text of the above Constitutional and Statutory provisions are set forth in the Appendix.

REASONS FOR DENYING THE WRIT

1. THERE IS NO CONFLICT IN THE ORDER OF THE SIXTH CIRCUIT COURT OF APPEALS AFFIRMING THE JUDGMENT OF THE DISTRICT COURT WITH OTHER COURTS OF APPEAL OR WITH THE DECISIONS OF THE UNITED STATES SUPREME COURT.

While Petitioner, a Michigan corporation, complains in detail about the eligibility of the area for a rehabilitation project, the method of adopting the Development Plan and various features of the Development Plan, it fails to allege sufficient facts tending to show that the respondents were making any intentional or purposeful discrimination between persons or classes.

In *Snowden v. Hughes,* 321 U. S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1943), this Court held in part in an action for damages under old Title 8 U. S. Code, §§41, 43 and 47(3) (now §§1981, 1983 and 1985(3), Title 42 U. S. Code Annotated), at page 7 of 321 U. S., at page 400, of 64 S. Ct.:

> "There is no allegation of any facts tending to show that in refusing to certify petitioner as a nominee, the Board was making any *intentional or purposeful discrimation* between persons or classes • • •."

And at page 8 of 321 U. S., at page 401 of 64 S. Ct.:

> "The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of *intentional or purposeful* discrimination • • •". (Emphasis added.)

In the case of *Burt v. City of New York*, 156 F. 2d 791, C.A. 2 (1946), in its opinion at page 791, the Court stated in part as follows:

> "In the seventh article of his amended complaint he has specified eight instances, in seven of which the defendants have in this way singled him out for unlawful oppression. These allegations go further than merely to assert that the plaintiff has been the victim of deliberate abuse of power by state officials, which would not be enough. They assert that he is the victim of a '*purposeful discrimination*'; being, if not the only artchitect so practised upon, at least one, who has suffered what others have in general escaped." (Emphasis added.)

In the case of *Baldwin v. Morgan*, 251 F. 2d 780, C.A. 5 (1958) in its opinion at page 784, the Court stated in part as follows:

> "The complaint next sets forth the status of the Terminal Company. Then, in a similar way, both affirmatively and negatively, it charges discriminatory compulsory segregation by the Terminal in the waiting rooms."

In affirming the judgment of the District Court, which held that the case of *Burt v. City of New York, supra*, is obviously inapplicable to the situation here in that a very different set of facts is there present (Petition 29) the Sixth Circuit Court of Appeals was not being inconsistent with the cases above cited.

2. THERE IS NO CONFLICT BETWEEN THE ORDER OF THE SIXTH CIRCUIT COURT OF APPEALS AND THE DECISIONS OF THE SUPREME COURT OF THE STATE OF MICHIGAN IN THE CONSTRUCTION OF THE CONSTITUTION AND LAWS OF THE STATE OF MICHIGAN RELATING TO THE CONDEMNATION OF PRIVATE PROPERTY FOR PUBLIC USE.

The Development Plan, the carrying out of which plaintiff seeks to enjoin, was approved and adopted by the Common Council of the City of Detroit pursuant to Act 344 of the Public Acts of 1945, as amended, C. L. 1948, §125.71 *et seq.*, as amended, M.S.A. §5.3501, *et seq.* (10a, 15a, 16a). (Appendix 13, 14, 15, 16.)

Section 5 of Act 344 provides for the acquisition by municipalities of property through condemnation proceedings for the accomplishment of the purposes of this Act (Appendix 16).

Condemnation proceedings by municipalities in the State of Michigan are peculiar in that the Michigan Constitution requires that the question of necessity for the taking as well as the matter of just compensation must be determined by a jury of twelve (12) freeholders (Appendix 13).

Act 124 of the Public Acts of the State of Michigan of 1883, as amended, C.L. 1948 §213.71 *et seq.*, as amended, M.S.A. 8.41 *et seq.* provides for condemnation by cities, villages and counties in the State of Michigan of private property for the use and benefit of the public (Appendix 16, 17, 18, 19, 20, 21).

Section 2 of Act 124 confers jurisdiction in condemnation proceedings upon the Recorder's Court (Appendix 16, 17).

The Recorder's court of the City of Detroit was established by the Legislature of the State of Michigan by Act 326 of the Local Acts of 1883, C. L. 1948, §726.1 *et seq.*, as amended, M.S.A. §27.3551 *et seq.*, and this court was given supplementary powers by the Legislature under Act 369 of the Public Acts of 1919, C. L. 1948, §725.1 *et seq.*, as amended, M.S.A. §27.3941 *et seq:*

In the case of *In re White*, 340 Mich. 140 (1945) on page 148, 65 N. W. 296 on page 300, the Michigan Supreme Court held in part as follows:

> "Article 7, §1, Michigan Constitution of 1908, provides that the judicial power shall be vested in the courts therein enumerated 'and such other courts of civil and criminal jurisdiction, inferior to the Supreme Court, as the legislature may establish by general law.' When the legislature, by the enactment of C. L. 1948, §726.1 *et seq.* (Stat. Ann. §27.3551 *et seq.*), provided for the recorder's court of the city of Detroit, it acted in the exercise of that constitutionally conferred power to establish 'other courts.' Having acted thus, the court so created under constitutional authority and provisions, became a constitutional court of record, possessed of the inherent powers appertaining thereto, equally as in the case of the circuit and other courts enumerated in the Constitution. * * *"

Section 6 of Act 124, under which condemnation proceedings must be exercised by the City of Detroit provides for a jury of 12 freeholders (Appendix 17, 18).

Section 7 of Act 124 provides that the jury shall be instructed as to their duties and the law by the Judge of the Court (Appendix 18).

Section 8 of Act 124 provides that the jury shall determine in their verdict the necessity for the proposed im-

provement and for taking such private property for the use or benefit of the public for the proposed improvement (Appendix 18, 19).

Section 10 of Act 124 empowers the court to set aside the verdict of the jury and order a new trial as in civil suits at law in the circuit courts of the state, (Appendix 19), and Section 11 provides for a new trial (Appendix 19).

Sections 11, 12, 13, 14 and 15 of Act 124 provides for appeals to the Michigan Supreme Court (Appendix 19, 20, 21).

Questions involving the Development Plan and the method by which it was adopted may be raised in the Recorder's Court and are reviewable on appeal by the Michigan Supreme Court. *City of Allegan v. Vonasek,* 261 Mich. 16 (1932), on page 21, 245 N. W. 557, on page 559; *In re Civic Center-Salloum,* 335 Mich. 582 (1953) on pages 1 and 2, 56 N. W. 2nd 387, on pages 389, 390.

While the question of necessity in condemnation proceedings in Michigan is for the jury, the action of the jury in determining necessity is reviewable by the courts. In the case of *Grand Rapids Board of Education v. Baczewski,* 340 Mich. 265 (1954), on page 271, 65 N. W. 2nd 810, on pages 812, 813, the Michigan Supreme Court held in part as follows:

> "Appellee contends that the jury's determination of necessity is conclusive and a review of said determination by this Court would constitute an assumption of jurisdiction denied to the Court by the Constitution.
>
> "We do not agree with appellee's contention. Numerous decisions have established that the jury is the final determiner of both law and fact in condemnation proceedings. Another important prin-

> ciple however was established *In re Owen and Memorial Parks in City of Detroit*, 244 Mich. 377 (61 A. L. R. 190), and in *In re Parkside Housing Project*, 290 Mich. 582, namely: that this Court has the right and duty to reverse a jury's determination in condemnation proceedings where the jury has proceeded on a wrong theory or basis to determine the question of necessity or damage and where 'the errors complained of are such as may fairly be said to have a controlling influence in securing the result.'"

In reviewing on appeal condemnation proceedings instituted by the City of Detroit in the Recorder's Court, the Supreme Court of Michigan has the power, and has exercised the power, to decide questions affecting both the State Constitution and the Federal Constitution. *In re Brewster Street Housing Site*, 291 Mich. 313 (1939), on pages 331 to 343, 289 N. W. 493, on pages 499 to 504; *In re Jeffries Housing Project*, 306 Mich. 638 (1943) on pages 646 and 647, 11 N. W. (2nd) 272 on pages 274, 275.

In the case of *National Quarries Co. v. Detroit, T & I. R. Co.*, 10 F. (2d) 139 (1926), the Sixth Circuit Court of Appeals was not being inconsistent with the Michigan Supreme Court when in its opinion at page 139 the Court stated in part as follows:

> "If it be conceded that the elements of federal jurisdiction exist, as likewise the power to grant the relief sought, nevertheless there is a question preliminary to those argued by plaintiff which we think is decisive of the case. It arises on the inquiry as to whether the bill shows facts justifying equitable intervention. We think it does not. Among the reasons for this view is the fact that every question arising under the state Constitution that is made here can be made and determined in the

> proceeding in the state court, and similarly the federal questions may be presented there, with the right of ultimate determination by the Supreme Court of the United States."

and further stated on page 140:

> "What has been said as to the absence of equity in the bill with respect to enjoining the proceeding because in violation of the Constitution of the state applies with equal force to the claim that the taking would be in violation of the federal Constitution, since it is not to be anticipated that the state courts will render any judgment in violation of the plaintiff's federal rights."

See also *Baber v. Texas Utility Company*, 228 F. 2d 665, C.A. 5 (1956).

Petitioner is attempting to invoke without a sufficient complaint, the Civil Rights Act for the purpose of circumventing the laws of the State of Michigan, particularly the requirement of the Michigan Constitution that the question of necessity in municipal condemnation proceedings must be determined by a jury of freeholders.

The accepted principles governing equitable and declaratory relief apply with equal force where relief is sought under the Civil Rights Act.

In the case of *Williams v. Dalton*, 231 F. 2d 646, C.A. 6 (1956), the Court in its opinion at page 648, stated in part as follows:

> "This was not an application for a writ of habeas corpus, however, but an action under the Civil Rights Act. That statute provides for 'an action at law, suit in equity, or other proper proceedings for redress.' 42 U. S. C. A. §1983. The district

courts are given express jurisdiction over such actions by 28 U. S. C. A. §1343. It is well settled, however, that accepted principles governing equitable and declaratory relief are no less applicable where such relief is sought under the Civil Rights Act. *Giles v. Harris*, 1903, 189 U. S. 475, 486, 23 S. Ct. 639, 47 L. Ed. 909; *Douglas v. City of Jeannette*, 1943, 319 U. S. 157, 63 S. Ct. 877, 87 L. Ed. 1324. Federal Courts have been chary of granting declaratory or equitable relief in an area of possible friction between federal and state jurisdictions. See, for example, *Public Service Commission v. Wycoff Co.*, 1952, 344 U. S. 237, 73 S. Ct. 236, 97 L. Ed. 291; *Railroad Commission of Texas v. Pullman Co.*, 1951, 312 U. S. 496, 61 S. Ct. 643, 85 L. Ed. 971; *Stefanelli v. Minard*, 1951, 342 U. S. 117, 72 S. Ct. 118, 96 L. Ed. 138."

In the final paragraph of its argument for granting the Writ (Petition 20), petitioner stresses the importance of the Supreme Court construing the sections of the Civil Rights Act involved in this case because of the profound influence it will have on the Federal Judiciary, as a whole, and the whole people of these United States. This argument is inconsistent with the attitude of petitioner in the Circuit Court of Appeals where the attorney for petitioner did not appear and present an oral argument when the case came on for hearing (Petition 30).

CONCLUSION

For the foregoing reasons, Respondents pray that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

NATHANIEL H. GOLDSTICK,
Corporation Counsel,

JOHN H. WITHERSPOON,
Assistant Corporation Counsel,
Attorneys for Respondents,
1010 City-County Building,
Detroit 26, Michigan.

Dated: June 12, 1961.

APPENDIX

Article XIII, Section 1 of the Constitution of the State of Michigan:

> "Private property shall not be taken by the public nor by any corporation for public use, without the necessity therefor being first determined and just compensation therefor being first made or secured in such manner as shall be prescribed by law."

Article XIII, Section 2 of the Constitution of the State of Michigan:

> "When private property is taken for the use or benefit of the public, *the necessity for using such property and the just compensation to be made therefor, except when to be made by the state, shall be ascertained by a jury of twelve freeholders* residing in the vicinity of such property, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law: Provided, That the foregoing provision shall not be construed to apply to the action of commissioners of highways or road commissioners in the official discharge of their duties." (Emphasis added.)

Act 344 of the Public Acts of the State of Michigan of 1945, as amended, C.L. 1948, §125.71 *et seq.*, as amended, M.S.A. §5.3501, *et seq.* as amended.

Section 1, M.S.A. §5.3501:

> "It is hereby found and declared that large areas in the municipalities of the state have become blighted, with the consequent impairment of tax-

able values upon which, in large part, municipal revenues depend; that such blighted areas are detrimental or inimical to the health, safety, morals, and general welfare of the citizens, and to the economic welfare of the municipality; that in order to improve and maintain the general character of the municipality, *it is necessary to rehabilitate such blighted areas;* that the conditions found in blighted areas can not be remedied by the ordinary operations of private enterprise, with due regard to the general welfare of the public, without public participation in the planning, property, acquisition, disposition and financing thereof; that the purposes of this art are to rehabilitate such areas by acquiring and developing properties within such areas for the protection of the health, safety, morals and general welfare of the municipality, to preserve existing values of other properties within or adjacent to such areas, and to preserve the taxable value of the property within such areas; *and the necessity in the public interest for provisions herein enacted is hereby declared as a matter of legislative determination to be a public purpose and a public use.*" (Emphasis added.)

Section 2, M.S.A. §5.3502:

"* * * 'Blighted area' shall be a portion of a municipality, developed or undeveloped, improved or unimproved, characterized by obsolescence, physical deterioration of structures therein, improper division or arrangement of lots and ownerships and streets and other open spaces, mixed character and uses of the structures, or any other similar characteristics which endanger the health, safety, morals, or general welfare of the municipality, and which may include any buildings or improvements not in themselves obsolescent, and any real property, residential or non-residential, whether improved or unimproved, the acquisition of which is deemed necessary for rehabilitation of the area. * * *"

Section 3, M.S.A. §5.3503:

> "Any municipality is hereby granted the power to bring about the rehabilitation of blighted areas and the prevention, reduction or elimination of blight, blighting factors or causes of blight, *and for that purpose to acquire real property by purchase, gift, exchange or condemnation,* and to lease, sell or exchange such real property in accordance with the provisions of this act." (Emphasis added.)

Section 4, M.S.A. §5.3504:

> "*The following plans, statements and actions are hereby made requisite for and conditions of the exercise of the powers herein granted for the acquisition, sale or lease of real property for the carrying out of a development plan in a development area.*
> • • •
>
> "(c) A development plan, adopted by the local legislative body, after public hearing thereon as hereinafter provided of the development area in which the land proposed to be acquired is located or for the effectuation or protection of which development the proposed land acquisition is deemed necessary. Such plan shall designate the location and extent of streets and other public facilities within the area and shall designate the location, character and extent of the categories of public and private land uses proposed for and within the area, such as residential, recreation, business, industry, schools, open spaces and others, and shall also include a feasible method for the relocation of families who will be displaced from the area in decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families, and such other general features of the proposed rehabilitation as may be determined by the local legislative body." (Emphasis added.)

Section 5, M.S.A. §5.3505:

> "For the accomplishment of the purposes of this act, the municapility shall acquire fee simple title in real property by purchase, gift, exchange, condemnation or otherwise, and shall apply such real property thereafter to the expressed purposes of this act.
>
> "*The local legislative body may institute and prosecute proceedings under the power of eminent domain in accordance with the laws of the state or provisions of any local charter relative to condemnation.* The purposes contemplated by this act are hereby declared to be public purposes within the meaning of the constitution, state laws and charters relative to the power of eminent domain. No resident owner in a development area may be dispossessed after condemnation under the provisions of this act until other adequate housing accommodations are available, to the people displaced." (Emphasis added.)

Act 124 of the Public Acts of the State of Michigan of 1883, as amended, C.L. 1948, §213.71 *et seq.*, as amended, M.S.A. §8.41 *et seq.* as amended.

Section 1, M.S.A. §8.41:

> "That the common council of any city, or the board of trustees of any village, or the board of county road commissioners, or the board of supervisors of any county in this state, is hereby authorized to take private property for the use or benefit of the public, within the limitation of the state constitution and to institute and prosecute proceedings for that purpose. * * *"

Section 2, M.S.A. §8.44:

> "Such proceedings may be commenced and prosecuted under this act, whenever the common coun-

cil, board of trustees, board of supervisors or board of county road commissioners shall have declared a public improvement to be necessary in the municipality or county, and shall declare that they deem it necessary to take private property, describing it, for such public improvement, designating it, and that improvement is for the use or benefit of the public. They shall, by resolution direct the city or village attorney, or the prosecuting attorney of the county, or the person acting as attorney for the said board of county road commissioners to institute the necessary proceedings in behalf of the municipality or county in the proper court, to carry out the object of the resolution in regard to taking private property by the city, village or county. *Jurisdiction is hereby conferred upon the circuit court for the county in all cases brought under this act: Provided, That in cities having a recorder's court, the proceedings shall be instituted and prosecuted in that court,* and in cities having a superior court and no recorder's court such proceedings shall be instituted and prosecuted in such superior court, unless otherwise ordered by the board of supervisors, in matters pertaining exclusively to the interests of the county." (Emphasis added.)

Section 6, M.S.A. §8.48:

"On the return day of the summons, or on some subsequent day to which the proceedings shall have been adjourned, if no sufficient cause to the contrary has been shown, the court shall make an order that a jury be impaneled in the cause. *Such jury shall be composed of twelve (12) freeholders* from the municapility, but in cases instituted by cities and villages, such freeholders, or any of them, may be drawn from the county if it shall be made to appear to the court that a disinterested panel cannot be drawn from such freeholders, and the court shall

so order, and shall be selected and impaneled as follows. * * *" (Emphasis added.)

Section 7, M.S.A. §8.49:

"The jurors so impaneled shall be sworn or shall affirm in substance as follows: 'You do solemnly swear (or affirm) that *you will well and truly ascertain and determine whether there is a public necessity for making the proposed improvement, and for taking for the use or benefit of the public the private property which the petition described and prays may be taken, and if you shall determine that it is necessary to make such improvement and to take said property, that then you ascertain, determine and award the just compensation to be made therefor,* and faithfully and impartially discharge all other duties as devolve upon you in this case, and unless discharged by the court a true verdict give according to law and the evidence, so help you God, (or under the pains and penalties of perjury).' The jury shall hear the proofs and allegations of the parties, and if so ordered by the court shall go to the place of the intended improvement, in the charge of an officer, and upon or as near as practicible to any property proposed to be taken and examine the premises. *They shall be instructed as to their duties and the law of the case by the judge of the court* and shall retire under the charge of an officer *and render their verdict in the same manner as on the trial of an ordinary civil case,* but the same shall be in writing and be signed by the foreman or by all the jurors." (Emphasis added.)

Section 8, M.S.A. §8.50:

"The jury shall determine in their verdict *the necessity* for the proposed improvement and for taking such private property for the use or benefit

of the public for the proposed improvement and in case they find such necessity exists they *shall award* to the owners of such property and others interested therein such compensation therefor as they shall deem just. * * *" (Emphasis added.)

Section 10, M.S.A. §8.52:

"*The verdict of the jury may be set aside by the court and a new trial ordered as in civil suits at law in the circuit courts of this state.* * * *" (Emphasis added.)

Section 11, M.S.A. §8.53:

"*Motions for a new trial or to arrest the proceedings shall be made within two (2) days after the rendition of the verdict, unless further time is allowed by the court; and if no such motion is made, or being made is overruled, the court shall enter an order or judgment confirming the verdict of the jury; and such judgment of confirmation, unless reversed by the supreme Court, shall be final and conclusive as to all persons interested therein.*" (Emphasis added.)

Section 12, M.S.A. §8.54:

"Any person whose property may be taken, considering himself aggrieved, *may appeal from the judgment of the court confirming the verdict of the jury* by filing in writing with the clerk of said court a notice of such appeal within five (5) days after the confirmation and within the same time serving a copy thereof on the city or village attorney, or prosecuting attorney of the county and filing a bond in said court, to be approved by the judge thereof, conditioned for the prosecution of said appeal to judgment and the payment of all costs, damages, and expenses that may be awarded against him, in

case the judgment of confirmation shall be affirmed. *Such appeal shall be perfected within the same time and prosecuted as an appeal in chancery,* as near as may be, subject to the provisions of this act." (Emphasis added.)

Section 13, M.S.A. §8.55:

"In case of such appeal the clerk of the court, on payment of his legal fees and charges, *shall transmit to the supreme court a certified copy of the necessary files, records, and proceedings in the case; and the judge of the court shall, at the request of the appellant, settle a case according to the usual practice of said court, showing the material evidence and instructions given to the jury bearing upon any disputed points to which exception was taken, and the objections, rulings, and exceptions in the case, all of which shall be returned by said clerk as part of the records, to the clerk of the supreme court.*" (Emphasis added.)

Section 14, M.S.A. §8.56:

"*The said appeal may be brought on for a hearing at any term of the supreme court, and said court may affirm, or for any substantial error reverse the judgment, and may grant a new trial.* The said court shall allow the prevailing party his reasonable costs and expenses to be taxed, and give judgment as in other chancery appeals, and all costs, damages and expenses awarded to the city, village, or county, if it so elect, may be applied on or deducted from the compensation, if any, to be paid, or execution may issue on the judgment. Damages may be awarded against a party appealing without reasonable cause." (Emphasis added.)

Section 15, M.S.A. §8.57:

> "*When the verdict of the jury shall have been finally confirmed by the court, and the time in which to take an appeal has expired, or, if an appeal is taken, on the filing in the court below of a certified copy of the order of the supreme court, affirming the judgment of confirmation,* it shall be the duty of the clerk of the court to transmit to the common council, board of trustees, or board of county road commissioners or board of supervisors, a certified copy of the verdict of the jury, and of the judgment of confirmation, and of the judgment, if any, of affirmance; and thereupon, the proper and necessary proceedings, in due course, shall be taken for the collection of the sum or sums awarded by the jury. * * *" (Emphasis added.)